-UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 32

In the matter of: BAY AREA HEALTHCARE CENTER Employer, and CAYETANO SANCHEZ, Petitioner, and SERVICE EMPLOYEES INTERNATIONAL UNION - UNITED HEALTHCARE WORKERS - WEST, Union.	Case No. 32-RD-134177

BAY AREA HEALTHCARE CENTER'S OPPOSITION TO UNION'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

Pursuant to Section 102.67(e) of the National Labor Relations Board's Rules and Regulations, Bay Area Healthcare Center (the "Company") submits this brief in support of its position that the request for review by SEIU-UHW ("the Union") of the Regional Director's Decision and Direction of Election should be denied.

The Union's request should be summarily denied because while it claims the Regional Director made clearly erroneous findings on substantial issues of fact, it fails to comply with Section 102.67(d) by submitting "a self-contained document enabling the Board to rule on the basis of its contents without the necessity or recourse to the record." Further, the Union's petition does not "contain a summary of all evidence or rulings bearing on the issues together

with page citations from the transcript and a summary of argument." Instead, the Union's petition speaks in unsupported generalities about how the Regional Director allegedly decided the case incorrectly based on the record, while conveniently ignoring all the evidence in the record which does support the Regional Director's factual findings and decision. For these reasons alone, the petition should be denied.

The petition should be denied on the merits as well. The overwhelming amount of evidence at the hearing compels the conclusion that the employees working in the Sub-Acute Unit ("SA Unit"), including those in the classifications of Licensed Vocational Nurse ("LVN") and Certified Nursing Assistant ("CNA"), are (and always have been) part of the bargaining unit represented by the Union, and thus should be considered as Union members when evaluating the decertification petition filed by Petitioner Cayetano Sanchez ("Petitioner"). Not only are SA Unit employees employed in classifications covered by the recognition clause in the collective bargaining agreement ("CBA"), but the Union requested to bargain -- and did in fact bargain -- with the Company over the terms and conditions of employment for SA Unit employees. Moreover, the Union collected dues from some SA Unit employees, and treated them as bargaining unit members. The Regional Director correctly found that the SA Unit employees are part of the bargaining unit and should be allowed to participate in the upcoming decertification election. The Board must not allow the Union to abandon the SA Unit employees as bargaining unit members now in a blatant attempt to derail the decertification petition.

Argument

A. The Regional Director Correctly Found That The Union Recognized The SA Unit CNAs and LVNs As Part Of The Existing Contractual Bargaining Unit

The Union argues that the Regional Director's decision must be reviewed by the Board because the decision on a substantial factual issue is clearly erroneous on the record and such

error prejudiced the Union. The Union's request must be denied. Procedurally, the Union failed to comply with Section 102.67(d) by submitting "a self-contained document enabling the Board to rule on the basis of its contents without the necessity or recourse to the record." The Union's petition also does not "contain a summary of all evidence or rulings bearing on the issues together with page citations from the transcript and a summary of argument." Without the proper evidence compiled to facilitate the Board's review, it is difficult to analyze the basis of the Union's arguments and the petition must be denied.

Beyond these procedural defects, the petition for review should be denied because the Regional Director's decision is not based on a clearly erroneous finding on a substantial factual issue. Rather, the Regional Director relied on the abundant documentary evidence and testimony from Shirley Ma and Sanjanette Fowler to find that the Union did in fact request to bargain over the terms and conditions of the SA Unit employees (and these requests were not limited to transfer issues) and that the Union recognized the SA Unit employees as members of the bargaining unit.

With respect to the bargaining history, the Regional Director correctly looked at the correspondence between the parties and found that the Union's request to bargain over the SA Unit was not limited to issues regarding the transfer of employees. Indeed, the January 30, 2013 letter from Ms. Fowler to Ms. Ma sets forth the Union's demand to bargain over "wage rate (sic) for such [SA] unit, job description, and job duties." Er. Ex. 8. Additional correspondence in the record between the parties further evidences the Union's repeated demands to bargain over the terms and conditions of the SA Unit without any limitation to transfer issues. Er Exs. 8-20.

The Union's argument that Ms. Fowler's request to bargain over *"changes"* to the terms and conditions of employment demonstrates that her request was limited to any impact on

existing SNF Unit employees only is directly contradicted by evidence demonstrating that the Union repeatedly requested information and to bargain over the initial wages paid to SA Unit employees and their job duties, and that the Union also regularly requested information regarding SA Unit members, including their contact information and rates of pay. Er. Ex. 4-5, 11-13. Such information is not needed to represent the interests of SNF Unit members only, and shows the disingenuous explanation offered by Ms. Fowler was manufactured after the fact in an effort to distance herself from bargaining for the SA Unit employees and thereby impede the decertification election.

The Regional Director's decision is also supported by the evidence regarding the parties' conduct and mutual understanding that the SA Unit was part of the bargaining unit. The Company never objected to the Union demanding to bargain over the SA Unit, and the Union regularly requested information about all bargaining unit employees, including SA Unit employees. While the Union tries to explain away such conduct after the fact, its thin explanations about trying to protect SNF Unit members looking to transfer are incredulous and disproven by the Union's own words and actions. Further, the Regional Director properly credited Ms. Ma's testimony where it conflicted with Ms. Fowler over the crucial issue of the scope of bargaining between the parties. p. 14 of Decision.

In addition, the Regional Director correctly found that the SNF and SA Unit employees worked in the same job classifications covered under the recognition clause in the CBA, particularly CNAs and LVNs. The SA Unit CNAs and LVNs worked in such close proximity (on the same floor) as the SNF employees, and performed similar duties under similar working conditions. Employees in both units also covered each other's shifts. All of these factual

findings were supported by testimony from Ms. Ma, the Petitioner, the other employee witnesses, and even Ms. Fowler.

The Regional Director also correctly relied upon the fact that the Union collected dues from SA Unit employees to support his finding that the SA Unit employees are part of the bargaining unit. The Regional Director correctly found that the Company provided all new employees, including SA Unit employees, with a union application and dues deduction authorization. Employees that returned the signed forms had dues deducted and the money was remitted to the Union. The Union never objected to the receipt of dues money from SA Unit employees and, in fact, sent letters to SA Unit employees who were not paying dues regarding their obligation to do so. While the Union now argues that Ms. Fowler played no role in attempting to collect union dues, the written evidence in the record shows that other Union personnel did attempt to collect dues from SA Unit members. The Union offered no evidence to disprove these facts. Thus, the Regional Director correctly realized that the Union recognized the SA Unit was part of the bargaining unit as evidenced by its actions in collecting union dues from SA Unit employees.

B. Conduct At The Hearing Did Not Result In Prejudicial Error To The Union

As a second ground to seek review, the Union argues that conduct at the hearing resulted in prejudicial error to its detriment by (1) allowing testimony from Company witnesses as to what they understood the Union's intention to be in seeking information from the employer, and (2) allowing testimony as to the Union's response to the decertification petition through outreach to SA Unit employees after the petition was filed.

As to the first ground, the Union does not provide any citation to the record of the alleged testimony it is referring to, nor explain how it served to "pollute the proceedings." A review of the record reveals that the parties had written and verbal communications wherein the Union

requested information about all bargaining unit members, including SA Unit employees, and requested to specifically bargain over the SA Unit. To the extent there was any testimony as to why the Union was making these requests, such testimony could come not only from Ms. Fowler (the individual making the request) but also Ms. Ma who had discussions with Ms. Fowler as to why she claimed to need such information and the scope of such requests. There was nothing improper about allowing such testimony, and it is relevant to the Union's state of mind to show that at the time it made the requests for information and to bargain, it understood the SA Unit was part of the bargaining unit.

On the second ground, the Union's actions towards SA Unit employees before and after the petition was filed are directly relevant to its state of mind as to whether it believed the SA Unit employees were included in the bargaining unit. Testimony from Ms. Fowler and employee witnesses demonstrates that both before and after the petition was filed, the Union treated SA Unit employees as part of the bargaining unit by discussing union issues with them. There is nothing improper about allowing such testimony, and it was not limited to the period after the petition was filed so the Union's argument simply has no merit and was unsupported by any authority.

Conclusion

The Regional Director correctly concluded that CNAs and LVNs in the SA Unit are part of the existing bargaining unit represented by the Union because they work in a covered job classification. Further, the Regional Director correctly found that the Union's actions in requesting to bargain over the SA Unit and in repeatedly requesting information about bargaining unit members (including the SA Unit) demonstrated that the Union understood it represented the SA Unit employees. For all these reasons (and the fact that the Union failed to

comply with the procedural rules), the Union's petition for review must be denied and the SA Unit should be allowed to participate in the February 18, 2015 decertification election.

Dated: February 4, 2015

Respectfully submitted,

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 560 Mission Street, Suite 3100, San Francisco, California 94105. On February 4, 2015, I served the following document(s):

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Juliana Blackwell